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EXAMINER

BUTLER, PATRICK

ART UNIT	PAPER NUMBER
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1732

MAIL DATE	DELIVERY MODE
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06/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/762,910

Applicant(s)

HOUSLER ET AL.

Examiner

Patrick Butler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-15 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5,6,8-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Currently amended Claims 7 and 12 are directed to a species that is independent or distinct from the species originally claimed for the following reasons: As originally filed, Claim 5 required extrusion onto a support layer, with the support layer between the extrudate and the foraminous surface, and Claims 7 and 12, which was generic to whether a support layer was required, now requires no support layer given the extrusion directly onto the three-dimensional transfer device. Thus, the species of Claims 7 and 12 of no support layer is distinct from Claim 5's requirement of a support layer.

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition

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timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 7 and 12 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 8-11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mullane, Jr. (US Patent No. 4,878,825) in view of Brock et al. (US Patent No. 4,041,203).

With respect to Claim 5, Mullane teaches forming a three dimensional web 551 (three-dimensionally imaged film) comprising the steps of providing a web of plastic material 550 (a molten polymer) onto a flexible foraminous forming member 995 (a foraminous surface) and using a vacuum chamber 962 to apply a fluid pressure differential to cause the heated web of plastic material to conform to the three dimensional pattern present in the flexible forming structure 935) (a retention means pulls the molten polymer through a plurality of foramina resulting in an imaged film laminate) (see col. 18, line 53 through col. 19, line 10 and Fig. 15).

Mullane does not expressly teach extruding onto a support layer between the foraminous surface and the extrudate.

Brock teaches positioning a microfiber mat 58 (support layer) between an extruded web 16a and a roll with raised points 44 (foraminous surface) (see col. 4, lines 9-22; col. 6, lines 10-28; and Figs. 2 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Brock's microfiber mat as a support layer in the method of Mullane in order to provide the benefits of an outer microfiber layer, principally increased desirable fabric-like characteristics (see Brock, col. 1, lines 9-13 and col. 6, lines 10-28).

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With respect to Claim 6, the microfiber mat 58 (support layer) would necessarily be a fibrous or filamentary non-woven or woven (see Brock, col. 6, lines 10-28).

With respect to Claim 11, the microfiber mat 58 (support layer) contains pores before it melts to the web 16a, which would make the support layer porous (see col. 5, lines 35-54). Moreover, optimizing for less mat material in the finished product would include a point where the microfiber mat would not be sufficiently thick to not be porous (see col. 3, lines 39-53).

With respect to Claim 13, Mullane teaches that apparatus 640 utilizes a vacuum cylinder 655 to apply the vacuum (see Fig. 10; col. 13, line 32 through col. 14, line 2).

With respect to Claim 8, Mullane in view of Brock teaches the method of making a three-dimensionally imaged fabric as previously described with respect to Claim 5.

Mullane does not expressly teach that the molten polymer should be applied as filaments.

Brock teaches that the extruded web 16a should be continuous filaments 18a (see col. 3, lines 58-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Brock's use of continuous filaments to form the extruded web in the process of forming a three-dimensionally imaged fabric in the process of Mullane in order to further provide the benefits of an outer microfiber layer, principally increased desirable fabric-like characteristics (see Brock, col. 1, lines 9-13 and col. 6, lines 10-28).

With respect to Claim 9, Mullane teaches to apply fluid pressure via a vacuum chamber 962 (vacuum).

With respect to Claim 10, the microfiber mat 58 (support layer) would necessarily be a fibrous or filamentary non-woven or woven (see Brock, col. 6, lines 10-28).

With respect to Claim 14, Mullane teaches that apparatus 640 utilizes a vacuum cylinder 655 to apply the vacuum (see Fig. 10; col. 13, line 32 through col. 14, line 2).

With respect to Claim 15, the microfiber mat 58 (support layer) contains pores before it melts to the web 16a, which would make the support layer porous (see col. 5, lines 35-54). Moreover, optimizing for less mat material in the finished product would include a point where the microfiber mat would not be sufficiently thick to not be porous (see col. 3, lines 39-53).

Response to Arguments

Applicant's arguments filed 28 March 2007 have been fully considered but they are not persuasive.

Applicant argues with respect to the 35 USC 102(b) and (e) rejections.

Applicant's arguments appear to be on the grounds that:

1) The rejections of Claims 1-4 and 7 over Mullane (US Patent No. 4,878,825) and Faulkner (US Patent No. 6,942,711) are overcome by the canceling of Claims 1-4 and the filamentary extrusion requirement of Claim 7.

Applicant argues with respect to the 35 USC 103(a) rejections. Applicant's arguments appear to be on the grounds that:

2) The 35 USC 103(a) rejection relies upon Faulkner (US Patent No. 6,942,711), which is commonly assigned and thus disqualified as a 35 USC 103(a) reference under 35 USC 103(c).

The Applicant's arguments are addressed as follows:

1) Applicant's arguments with respect to the 35 USC 102(b) and (e) rejections have been fully considered and are persuasive. Therefore, the 35 USC 102(b) and (e) rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as detailed in the 35 USC 103(a) section above.

2) Applicant's arguments with respect to the 35 USC 103(a) rejections in the Office Action of 29 December 2006 have been fully considered and are persuasive. Therefore, the 35 USC 103(a) rejections in the Office Action of 29 December 2006 have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as detailed in the 35 USC 103(a) section above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is (571) 272-8517. The examiner can normally be reached on Mon.-Thu. 7:30 a.m.-5 p.m. and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Assistant Examiner
Art Unit 1732



CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER
6/22/07